



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0149; FRL-9974-98-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland;
2011 Base Year Inventory for the 2008 8-Hour Ozone National Ambient Air Quality
Standard for the Maryland Portion of the Philadelphia-Wilmington-Atlantic City
Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City marginal nonattainment area for the 2008 8-hour ozone national ambient air quality standard (NAAQS). The State of Maryland submitted the emission inventory, which included the ozone precursors, nitrogen oxides (NO_x) and volatile organic compounds (VOC), as well as several other pollutants, through the Maryland Department of the Environment (MDE) to meet the nonattainment requirements for marginal ozone nonattainment areas for the 2008 8-hour ozone NAAQS. EPA is approving the 2011 base year NO_x and VOC emissions inventory for the 2008 8-hour ozone NAAQS as a revision to the Maryland State Implementation Plan (SIP) in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-

R03-OAR-2017-0149. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, (215) 814-2043, or by e-mail at calcinore.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Ground level ozone is formed when NO_x and VOC react in the presence of sunlight. NO_x and VOC are referred to as ozone precursors and are emitted by many types of pollution sources, including motor vehicles, power plants, industrial facilities, and area wide sources, such as consumer products and lawn and garden equipment. Scientific evidence indicates that adverse public health effects occur following exposure to ozone. These effects are more pronounced in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. In response to this scientific evidence, EPA promulgated the first ozone NAAQS in 1979, the 0.12 part per million (ppm) 1-hour ozone NAAQS. *See* 44 FR 8202 (February 8, 1979). EPA had previously promulgated a NAAQS for total photochemical oxidants.

On July 18, 1997, EPA promulgated a revised ozone NAAQS of 0.08 ppm, averaged over eight hours. 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008).

On May 21, 2012, the Philadelphia-Wilmington-Atlantic City area was designated as marginal nonattainment for the 2008 8-hour ozone NAAQS. 77 FR 30088. The designation of the Philadelphia-Wilmington-Atlantic City area as marginal nonattainment was effective July 20, 2012. The Philadelphia-Wilmington-Atlantic City nonattainment area is comprised of Cecil County in Maryland, as well as counties in Delaware, New Jersey, and Pennsylvania.

Under sections 172(c)(3) and 182(a)(1) of the CAA, Maryland is required to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutants, i.e. the ozone precursors NO_x and VOC, for the marginal nonattainment area, i.e., the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area. In order to satisfy the requirements of CAA sections 172(c)(3) and 182(a)(1), on January 19, 2017, Maryland formally submitted the 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS as a SIP revision (SIP # 16-15).

On September 25, 2017, EPA simultaneously published a notice of proposed rulemaking (NPR) (82 FR 44544) and a direct final rule (DFR) (82 FR 44522) approving Maryland's 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS as a SIP revision. The DFR included an

amendment to 40 CFR 52.1070 (identification of Maryland’s SIP) and an amendment to 40 CFR 52.1075 (explanation of Maryland’s base year emissions inventories). EPA received an adverse comment on the rulemaking and withdrew the DFR prior to the effective date of November 24, 2017. *See* 82 FR 54298 (November 17, 2017). However, in the withdrawal, EPA only withdrew the amendment to 40 CFR 52.1070, which would have added an entry for the “2011 Base Year Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard” to the table under 40 CFR 52.1075(e) (EPA-approved nonregulatory and quasi-regulatory material). EPA inadvertently did not withdraw the amendment to 40 CFR 52.1075, which became effective on November 24, 2017. This provision revised Maryland’s SIP to include paragraph (q) under 40 CFR 52.1075, which described EPA’s “approval” of Maryland’s 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS. Because the addition of 40 CFR 52.1075(q) did not contain an effective date and this final action approving Maryland’s 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS will correctly add 40 CFR 52.1075(q), the earlier effective date which added 40 CFR 52.1075(q) is harmless. Therefore, no correction is needed for this harmless early addition. In the NPR, EPA had proposed to approve the SIP revision, which included Maryland’s 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS. In this final rulemaking, EPA is responding to the comments submitted on the proposed revision to the Maryland SIP and is approving Maryland’s 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS as a SIP revision. Because 40 CFR 52.1075(q) was prematurely added by EPA’s inadvertent failure to

withdraw the amendment to 40 CFR 52.1075 when we withdrew the DFR in the November 17, 2017 withdrawal **Federal Register** notice, no further amendment to 40 CFR 52.1075 is necessary.

II. Summary of SIP Revision and EPA Analysis

Under CAA section 172(c)(3), states are required to submit a comprehensive, accurate, and current inventory of actual emissions from all sources (point, nonpoint, nonroad, and onroad) of the relevant pollutant or pollutants in the nonattainment area. CAA section 182(a)(1) requires that areas designated as nonattainment and classified as marginal submit an inventory of all sources of ozone precursors no later than 2 years after the effective date of designation. EPA's guidance for emissions inventory development calls for actual emissions to be used in the base year inventory. The state must report annual emissions as well as "summer day emissions." As defined in 40 CFR 51.900(v), "summer day emissions" means, "an average day's emissions for a typical summer work weekday. The state will select the particular month(s) in summer and the day(s) in the work week to be represented."

On January 19, 2017, MDE submitted a formal revision (SIP # 16-15) to its SIP. The SIP revision consists of the 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS. MDE selected 2011 as its base year for SIP planning purposes, as recommended in EPA's final rule, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements." *See* 80 FR 12263 (March 6, 2015). MDE's 2011 base year inventory includes emissions estimates covering the general source categories of stationary point, area (nonpoint), nonroad mobile, onroad mobile, and Marine-Air-Rail (M-A-R). In its 2011 base

year inventory, MDE reported actual annual emissions and typical summer day emissions for the months of May through September for NO_x, VOC, and carbon monoxide. MDE also reported annual emissions for fine particulate matter (PM_{2.5}), sulfur dioxide (SO₂), and ammonia (NH₃). In this approval of the 2011 base year emissions inventory for the 2008 ozone NAAQS, EPA is approving only the portions of the inventory that relate to the relevant ozone precursors, which are VOC and NO_x.¹

Table 1 summarizes the 2011 VOC and NO_x emission inventory by source sector for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area. Annual emissions are given in tons per year (tpy) and summer weekday emissions are given by tons per day (tpd).

Table 1. Summary of 2011 Emissions of Ozone Precursors for the Philadelphia-Wilmington-Atlantic City Nonattainment Area

Source Sector	Summer weekday (tpd)		Annual (tpy)	
	VOC	NO _x	VOC	NO _x
Point	0.301	2.63	64.91	76.19

¹ The actual annual emissions and typical summer day emissions were summarized by MDE in Table 1-1: 2011 Base Year SIP Emission Inventory Summary. A discrepancy was found between the area annual emissions reported for PM_{2.5} and NH₃ in Table 1-1 and the area annual emissions reported for PM_{2.5} and NH₃ in Table 4-1: 2011 Base Year SIP Area Source Emission Inventories and the Nonpoint Annual data table under Appendix C Area / Nonpoint Sources. Since the anthropogenic totals in Table 1-1 correspond to the annual emissions values, the anthropogenic totals for PM_{2.5} and NH₃ in Table 1-1 were also affected by the discrepancy. In a correction letter, MDE confirmed that the area annual emissions for PM_{2.5} and NH₃ in Table 1-1 are 456.50 tpy for PM_{2.5} and 477.15 tpy for NH₃. MDE also confirmed that the corresponding anthropogenic totals for PM_{2.5} and NH₃ are 625.04 tpy and 530.10 tpy. MDE has submitted a corrected version of page 3 of the 2011 base year inventory to reflect the necessary corrections to Table 1-1. The corrected version as well as the correction letter are included in the docket for this rulemaking even though the CAA at sections 172 and 182 only require an inventory of ozone precursors. See July 20, 2017 letter from Brian Hug, Program Manager, Maryland Department of the Environment to Cecil Rodrigues, Acting Regional Administrator, EPA Region III, Subject: SIP #16-15 “2011 Base Year Emissions Inventory for the Maryland Portion of the Philadelphia-Atlantic City, PA-NJ-DE-MD 2008 Ozone NAAQS Nonattainment Area (Cecil County, MD) Minor Corrections.”

Area	2.863	0.31	937.78	242.02
Nonroad	5.127	2.01	1,054.93	529.02
Onroad	2.29	7.50	791.98	2,730.44
M-A-R	0.030	0.46	11.03	167.97
Anthropogenic Subtotal	10.61	12.90	2,860.63	3,745.63

Point sources are large, stationary, and identifiable sources of emissions that release pollutants into the atmosphere. Maryland obtained its point source data from the MDE Air and Radiation Management Administration (ARMA) point source emissions inventory. ARMA identifies and inventories stationary sources for the point source emissions inventory through inspections, investigations, permitting, and equipment registrations.

Area sources, also known as nonpoint sources, are sources of pollution that are small and numerous and have not been inventoried as specific point or mobile sources. To inventory these sources, they are grouped so that emissions can be estimated collectively using one methodology. Examples of nonpoint sources include residential heating emissions and emissions from consumer solvents. MDE calculated nonpoint emissions for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area by multiplying emissions factors specific for each source category with some known indicator of collective activity for each source category, such as population or employment data.

Nonroad sources are mobile sources other than onroad vehicles. In its 2011 base year inventory, MDE separated nonroad sources into two categories: “Nonroad Model NMIM” and M-A-R. Nonroad Model NMIM sources include lawn and garden equipment, airport service equipment, recreational land vehicles or equipment, recreational marine equipment, light commercial

equipment, industrial equipment, construction equipment, agricultural or farm equipment, and logging equipment. MDE relied on EPA's nonroad emissions calculations from the National Mobile Inventory Model (NMIM- April 5, 2009) to calculate emissions from sources in the "Nonroad Model NMIM" category. M-A-R sources include railroads, commercial aviation, air taxis, general aviation, military aviation, and commercial marine vessels. MDE estimated M-A-R emissions using data from surveyed sources or state and federal reporting agencies. Onroad or highway sources are vehicles, such as cars, trucks, and buses, which are operated on public roadways. MDE estimated onroad emissions for these sources using EPA's Motor Vehicle Emission Simulator (MOVES) model, version 2010a, and appropriate activity levels, such as vehicle miles traveled (VMT) estimates developed from vehicle count data maintained by the State Highway Administration (SHA) of the Maryland Department of Transportation (MDOT).

EPA reviewed Maryland's 2011 base year emission inventory's results, procedures, and methodologies for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area and found them to be acceptable and approvable under CAA sections 110, 172(c)(3) and 182(a)(1) of the CAA. EPA's review and analysis is detailed in a Technical Support Document (TSD) prepared for this rulemaking. The TSD is available online at <http://www.regulations.gov>, Docket ID No. EPA-R03-OAR-2017-0149. The public comments received on the NPR are discussed in Section III of this rulemaking action.

III. Public Comments and EPA's Response

EPA received two public comments on our September 25, 2017 proposal to approve Maryland's 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS. The comment submitted on October 25,

2017, was not related to this action and will not be addressed here.

Comment: The commenter stated that for a multistate nonattainment area, EPA cannot approve a single state's emission inventory. Rather, the commenter believes that EPA must approve a single emission inventory for the entire nonattainment area instead of taking a piecemeal approach to act on each individual emissions inventory submitted by each state for that state's portion of the nonattainment area. The commenter expressed concern that by approving separate emission inventories for each state, EPA will not know if all of the other states are "within the right limits."

Response: For ozone nonattainment areas, CAA section 182(a) specifically provides that "Each State in which all or part of a Marginal Area is located shall, with respect to the Marginal Area (or portion thereof ...), submit to the Administrator the State implementation plan revisions ... described under this subsection." CAA section 182(a)(1) requires that "the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources." EPA notes that this requirement to submit a SIP revision providing for a comprehensive inventory applies to each individual state, including a state in which only part of a nonattainment area is located. Each other state that is part of the nonattainment area would also bear the same requirement and, therefore, the CAA provides for a comprehensive emission inventory for the entire nonattainment area.

CAA section 110(k) requires the EPA to act on a SIP revision within a set amount of time of when that SIP revision is submitted. The requirement is to act on each individual SIP submission. Nothing in the CAA requires EPA to act on groups of submittals, and likewise, there is no CAA requirement to act in a single action for SIPs submitted across an entire

nonattainment area. Thus, EPA is appropriately acting to approve only Maryland's inventory submission for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS.

IV. Final Action

EPA is approving the Maryland SIP revision submitted on January 19, 2017, which is Maryland's 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS, as a revision to the Maryland SIP. This rule, which responds to the adverse comment received, finalizes our proposed approval of Maryland's 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because

SIP approvals are exempted under Executive Order 12866.

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving Maryland's 2011 base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City nonattainment area for the 2008 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 15, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart V—Maryland

2. In § 52.1070, the table in paragraph (e) is amended by adding the entry “2011 Base Year Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard” at the end of the table to read as follows:

§ 52.1070 Identification of plan.

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(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* *		
2011 Base Year Emissions Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard.	Maryland portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD 2008 ozone nonattainment area	01/19/2017	<u>[Insert date of publication in the Federal Register],</u> <u>[Insert Federal Register citation]</u>	§52.1075(q)

[FR Doc. 2018-04184 Filed: 2/28/2018 8:45 am; Publication Date: 3/1/2018]